IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No 2 of 2005
in
Notice of Motion No.2024 of 2002
in
Suit No. 25l7 of 2002

Smt Chandrakala Balkrishnan Gundu..Appellant
vs
Smt Sharda Balkrishnan Gundu & ors..Respondents

Mr.A.L.Kumar i/b Mohankumar K for appellant
Mr. A. R.Pandey for respondent no.l
Mr. P G Lad for respondent nos 4 to 6

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 23.3.2005

P.C:

. Heard learned counsel for the parties.

2. The challenge is to the order passed by the learned single Judge under section 6 of the Specific Reliefs Act. The suit has been filed by the first respondent complaining that she has been forcibly dispossessed from the suit premises. The first respondent claims to be the wife of one Balkrishnan Gundu and she has two children from the said Balkrishnan Gundu. The first respondent claims that the tenancy of the suit premises stands in her name and since l982 she has been paying rent.It is further case of the first respondent that in the year she took divorce from her husband

and thereafter her husband got married to defendant no.l i.e. present appellant. In l990 or thereabouts when the first respondent apprehended that appellant will take forcible possession of the suit premises from the first appellant and that she has right in the premises being the second wife of the said Balkrishna Gundu, the first appellant filed suit in the City Civil Court Bombay being Short Cause Suit No.3489 of l990 for injunction restraining the appellant from taking possession of the suit premises otherwise than by due process of law.

3. By a judgment and decree dated 22.6.l998 passed by the City Civil Court Bombay a decree of permanent injunction has been passed against the appellant restraining her from interfering and disturbing the first respondent’s possession of the suit premises. The operative part of the order reads as under:

> "l. The defendant is hereby permanently restraining from interfering with and disturbing the plaintiff’s possession of the suit premises and from taking forcible possession thereof from her except by due process of law.

2. The suit is decreed in above terms with no order as to costs."

4. In l998 the appellant approached the Small Causes Court Bombay by filing a declaratory suit being Suit No.277 of l998 claiming herself to be the lawful tenant in respect of the suit premises . In that suit it was clearly stated that the first respondent is in possession of the suit premises. In fact in the Small Causes Court the appellant is claiming a decree that the first respondent should be directed to hand over possession of the suit premises to her.

5. Therefore it is clearly seen that all along the first respondent was in possession of the said premises . She has pleaded that the appellant with the help of appellant nos 2 to 6 came to the suit premises and took forcible possession on 9.7.2002. The only defence is that the first respondent is not a legally wedded wife and the tenancy was in favour of the husband Balkrishnan Gundu and on 7.l.2002 Balkrishnan Gundu handed over the possession of the suit premises to the appellant in the presence of two panchas of Padmashali Telugu

Community. In view of the decree of the City Civil Court it is clearly seen that the first respondent was in possession of the suit premises and therefore there was no question of husband of the appellant surrendering tenancy rights in respect of the said premises in favour of the appellant. In the circumstances no fault could be found with the order of the learned single Judge appointing the Court Receiver.

. Appeal is dismissed.